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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/826,237

04/17/2004

Daniel R. Burnett

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12/19/2006

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EXAMINER

WUEST, PHILIP R

ART UNIT

PAPER NUMBER

3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

12/19/2006

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/826,237

Applicant(s)

BURNETT, DANIEL R.

Examiner

Phil Wiest

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 12-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) 1-20 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Applicant's election without traverse of Group A: Claims 1-11 in the reply filed on 5/24/06 is acknowledged.

Claims 12-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 5/24/06.

Drawings

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the gray area makes the details of the shunt indistinguishable. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Rubenstein et al. (US 6,264,625).

With respect to Claim 1, Rubenstein et al. disclose an implantable fluid management system comprising a first tube member (2, 64) having a first end 68 and a second end (at 58) and a length which defines a lumen therethrough, a pump 72 fluidly coupled to the first member, and an integrated controller 10 for controlling and actuating the pump (Column 7, Lines 51-67). See Figures 9 and 10A.

With respect to Claim 2, Rubenstein et al. discloses that the controller is a valve 140 located within the pump 72 (Column 10, Lines 50-51). See Figure 10D.

With respect to Claims 3 and 4, Rubenstein et al. discloses a pressure sensor 30 that is capable of sending a signal to the controller, thereby actuating the pump 72 when a predetermined pressure is experienced (Column 7, Lines 51-67).

With respect to Claims 5 and 6, Rubenstein further discloses a first pressure sensing element 30 on the first tube member (2, 64) that is configured to influence the control of the pump 72. Said first pressure sensing element is disposed on the tip of the first tube member (2, 64). See Figure 7.

With respect to Claim 7, Rubenstein et al. further discloses a second tube member (2, 66) defining a lumen therethrough. Said second tubing member (2, 66) comprises a second pressure sensing element 30 at its tip 70 (Column 9, Lines 35-36). Said second pressure sensing element is configured to control the pump 72 (Column 7, Lines 51-67). See Figures 7 and 9.

With respect to Claim 8, Rubenstein et al. disclose an implantable fluid management system comprising a first tube member (2, 64) having a first end 68 and a second end (at 58) and a length which defines a lumen therethrough, a pump 72 fluidly coupled to the first member. Furthermore, the fluid management system comprises pressure sensors 30 that are capable of controlling the pump (Column 7, Lines 51-67). See Figures 7, 9, and 10A.

With respect to Claims 9 and 10, Rubenstein et al. disclose an implantable fluid management system comprising a first tube member (2, 64) having a first end 68 and a second end (at 58) and a length which defines a lumen therethrough, a pump 72 fluidly coupled to the first member, and a first pressure sensing element 30 capable of influencing the action of the pump (Column 7, Lines 51-67). See Figures 7, 9, and 10A. Regarding Claim 10, the first end 68 of the first tube member (2, 64) further comprises a first pressure sensing element 30 disposed on the tip of the tube.

Claims 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Lewis et al. (US 6,436,087).

With respect to Claims 9 and 10, Lewis et al. disclose an implantable fluid management system comprising a first tube member 500 comprising a first end 504, a second end 60, a length which defines a lumen therethrough, a pump 100 which is fluidly coupled to the first tube member, and a first pressure sensing element 512 disposed on the first tube. Regarding Claim 10, said first tube member comprises a tip 504 and said first pressure sensing unit 512 is disposed at the tip of the first tube member 500. See Figure 13.

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With respect to Claim 11, Lewis further discloses a second tube member (519 or 520) defining a lumen therethrough, and a second pressure sensing element 510 which is disposed in the first tube member 500. Said second pressure sensing element 510 is configured to control the pump 100 (Column 17, Lines 30-37).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phil Wiest whose telephone number is (571) 272-3235. The examiner can normally be reached on 8:30am-5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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PRW
12/8/06

TATYANA ZALUKAEVA
SUPERVISORY PGM. GEN. EXAMINER

A handwritten signature in black ink, appearing to read 'Tatyana', is written over the printed name and title.